

EX 1

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
DAYTON DIVISION**

IN RE:

Case No. 19-31090

Charles D. Pence

Chapter 13

Debtor.

Judge Guy R Humphrey

CARVANA LLC

Adversary Case No. 19-03077

Plaintiff

vs.

Charles D. Pence

Defendant

EXHIBIT 1 - AFFIDAVIT OF JON J. LIEBERMAN ATTESTING TO DEFAULT

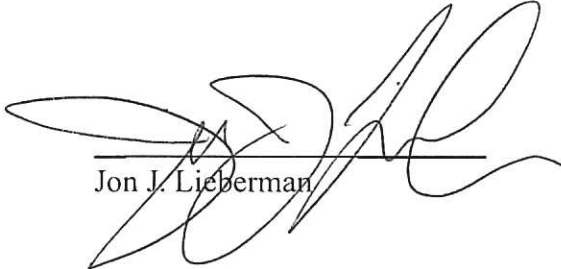
COMES NOW, Jon J. Lieberman, after being duly sworn upon his oath and states as follows:

1. That he is the Attorney of record for the Plaintiff herein, and has personal knowledge of the facts set forth in this Affidavit.
2. That he is duly authorized to make this affidavit, and is competent to testify to the matters contained in this affidavit.

3. That the Plaintiff herein on the 5th day of August 2019, filed in this cause its Complaint.
4. That examination of the Court files and record in this cause shows that the Defendant, Charles D. Pence, and his attorney in the main case #19-31090 David J. Smith, was served by U.S. Mail with a copy of the Summons and Complaint on August 07, 2019.
5. That more than thirty (30) days have elapsed since the date on which said defendant, Charles D. Pence, and his attorney in the main case #19-31090 David J. Smith, were served with Summons and Complaint excluding the date thereof.
6. That the Defendant, Charles D. Pence failed to answer or otherwise defend as to Plaintiff's Complaint, or serve a copy of any answer or other defense which they may have had upon Jon J. Lieberman, Attorney of record for said Plaintiff.
7. (The adversary case pacer docket indicates that on August 7, 2019, that Plaintiff filed its Certificate of Service of Summons with attached Summons in the incorrect format. It should have been converted to a Flattened PDF document. On August 8, 2019, an Order of Deficiency was entered by the Court, and the Court then informed Counsel for Plaintiff that the Court had corrected the deficiency on its own. Counsel for Plaintiff then noticed that no Answer deadline appeared on the adversary pacer docket, and informed the Clerk's Office of the same. The Clerk's Office informed Counsel for Plaintiff that this would be corrected, and the Answer Due date of 9/23/19 then appeared on the adversary pacer docket. Counsel for Plaintiff has honored that extended Answer due date. On September 9, 2019, at a meeting of the Southern

District of Ohio Bankruptcy Court Attorney Advisory Committee at the Dayton, Ohio Bankruptcy Court, Counsel for Plaintiff discussed the case with attorney David J. Smith, and informed him that if he intended to defend the adversary proceeding on behalf of Defendant that he needed to file an Answer per the pacer indicated deadline. Counsel for Plaintiff reiterates that both the Defendant and Mr. Smith were served by U.S. Mail with a copy of the Summons and Complaint on August 07, 2019)

8. That this Affidavit is executed by affiant herein in accordance with Bankruptcy Rule 7055 of the Bankruptcy Rules of Procedure, for the purpose of enabling the Plaintiff herein to obtain a Default Judgment against the Defendant, Charles D. Pence for his failure to answer or otherwise defend as to Plaintiff's Complaint.
9. That the factual allegations contained in the adversary action filed in this matter are true and correct as based upon the investigation of the circumstance of the 2015 KIA OPTIM SXL - VIN 5XXGR4A67FG448628 of Defendant Charles D. Pence, which is listed in the bankruptcy petition.



Jon J. Lieberman

Subscribed and sworn to before me on
October 7, 2019.

Notary Public Betsy A. Nesbella
My Commission Expires 9/30/2022

